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and ROSA COURT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCENT KAMYAR VAGHAR,

Plaintiff,

v.

DAVID J. KILLIAN; ANTHONY M.
MAROTTA; and ROSA COURT, LLC, a
New Jersey limited liability company,

Defendants.

Case No. C 07 4083 MMC

**DECLARATION OF DAVID J. KILLIAN
AS CO-MANAGING MEMBER OF ROSA
COURT, LLC IN SUPPORT OF MOTION
TO DISMISS SECOND AMENDED
COMPLAINT OF PLAINTIFF VINCENT
KAMYAR VAGHAR OR, IN THE
ALTERNATIVE, TO TRANSFER VENUE**

Date: November 16, 2007
Time: 9:00 a.m.
Courtroom: 7
Honorable Maxine M. Chesney

I, David J. Killian, declare:

1. I am an adult individual over eighteen years of age and a co-managing member of Rosa Court, LLC ("Rosa"). I make this declaration in support of Defendants' Motion to Dismiss the Second Amended Complaint (the "Second Complaint") of Plaintiff Vincent Kamyar Vaghar ("Vaghar") or, in the Alternative, to Transfer Venue of this matter to the Eastern District of Pennsylvania. I have personal knowledge of the matters stated in this declaration and could and would competently testify thereto if called upon as a witness at trial or any other proceeding in this matter.

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1 A. **Overview:**

2 2. In paragraph 2 of the Second Complaint, Vaghar alleges that:

3 “This court has jurisdiction over each Defendant, because each
4 Defendant has purposefully availed himself or itself of the benefits
5 and protections of this jurisdiction.”

6 3. Despite Vaghar’s conclusory assertions to the contrary, Rosa never agreed
7 to defend or otherwise litigate a claim with him involving the conveyance of real estate located in
8 Pennsylvania in any court within the State of California. Rosa’s understanding of this lawsuit is
9 that Vaghar wants the Defendants to convey to him title to a condominium that Rosa owns and
10 which is located in Philadelphia.

11 B. **All of Rosa’s Contacts Have Been With the Commonwealth of
12 Pennsylvania or the State of New Jersey:**

13 4. Rosa is a Limited Liability Company that was formed for convenience
14 under the laws of the State of New Jersey where Rosa’s co-managing member, Anthony Moratta
15 (“Moratta”) resides, but which conducts all of its business in the Commonwealth of Pennsylvania
16 and, in particular, in the County of Philadelphia.

17 5. Rosa is a single purpose entity whose only business activities relate to the
18 ownership and development of the real estate project referred to in Exhibit “A” of the Second
19 Complaint (at paragraph “C”) -- at the “*intersections of Federal and Juniper Streets and Federal
20 and Clarion Streets in Philadelphia*” -- where the underlying dispute involving the Defendants’
21 alleged duty to convey a condominium to Vaghar is physically located (the “Project”).

22 6. Aside from Rosa’s activities at the Project, Rosa has no other business
23 offices, assets or business operations anywhere other than in the Commonwealth of Pennsylvania
24 (and, in particular, in the county of Philadelphia) and its administrative office located in New
25 Jersey.

26 C. **Lack of Contacts With California:**

27 7. Rosa is not registered, nor has it ever sought registration, as a foreign
28 business with the State of California.

65040002/356950v1 8. Rosa has never purchased or held an interest in real property located in the

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1 State of California.

2 9. Rosa has never employed residents of, nor has it ever conducted business
3 in, the State of California.

4 10. Rosa has never maintained any checking, depository or investment
5 accounts with any financial institution located within the State of California.

6 11. Rosa has never solicited any resident of the State of California (including
7 Vaghar) to conduct business with it, or any entity with which it is affiliated.

8 **D. All of the Parties' Contacts With One Another Have Been With the**
9 **Commonwealth of Pennsylvania:**

10 12. Although not mentioned anywhere in the Second Complaint, Vaghar has
11 traveled to Philadelphia, Pennsylvania on at least 12 separate occasions over the past 4½ years
12 solely for the purpose of investigating, negotiating over, and ultimately participating (as a
13 business partner) in one or more real estate projects that the individual Defendants are currently
14 developing in Philadelphia, Pennsylvania.

15 13. For example, the loan documents (referred to in paragraphs 9-11 of the
16 Second Complaint as the "promissory note" and the "personal guaranty") reflecting, in part,
17 Vaghar's involvement in Rosa's development of the Project, were both presented by Vaghar to
18 Moratta and me, and ultimately signed by us, in Philadelphia, Pennsylvania.

19 14. Thereafter, Vaghar visited Philadelphia, Pennsylvania on at least 6 separate
20 occasions solely for the purpose of: (i) monitoring the Project; (ii) weighing in on decisions
21 relating to Rosa's progress with respect to the completion of the Project; and (iii) discussing with
22 Marotta and me various business issues relating to the Project.

23 15. Later, in or around the late summer and early fall of 2006, Vaghar began to
24 contact me in Philadelphia (in my capacity as Rosa's co-managing member) about his desire to
25 have Rosa execute and consent to the terms of the "Agreement for Settlement of Debt" (the
26 "Agreement") that forms the factual predicate for the Second Complaint he filed in California.

27 16. Vaghar then traveled to Philadelphia, Pennsylvania again to physically
28 present Marotta and me with the Agreement for us to sign (both individually and on behalf of
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1 Rosa).

2 17. Notwithstanding the language set forth in paragraph 3.6 of the Agreement
3 to the contrary, that document was not "negotiated" by Rosa in California, but rather over cell
4 phone calls initiated by Vaghar with me in Philadelphia as a representative of Rosa.

5 18. Likewise, the Agreement was not "entered into" by Rosa in California, but
6 rather signed by all four parties in Philadelphia during a lunch break at the Project when Vaghar
7 was walking the Project with Moratta and me.

8 19. Rosa never requested that a lawyer review the Agreement before Moratta
9 and I physically signed the document on its behalf in Philadelphia, Pennsylvania.

10 20. Ultimately, Vaghar filed suit against Rosa, Moratta and me in this court.
11 Despite doing so in California, he did not ask Moratta and me to come to California to discuss the
12 lawsuit or to accept service of his original complaint.

13 21. Rather, Vaghar traveled to Philadelphia, Pennsylvania again (under the
14 pretense of another site inspection at the Project) during which time he met with Moratta and me,
15 and then immediately summoned a third party to approach us to place a copy of his original
16 complaint (dated August 8, 2007) in our hands.

17 Executed this 5th day of October, 2007, in the Commonwealth of Pennsylvania,
18 County of Philadelphia.

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct.

21 
22 David J. Killian
23 Co-Managing Member
24 of Rosa Court, LLC
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